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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
OF THE SOUTHERN DISTRICT OF OHIO

John T. Valente 348 Firwood Drive Apt U Dayton, Ohio 45419 Plaintiff vs. University of Dayton School of Law 300 College Park Dayton, Ohio 45469-2760 and Harry Gerla Associate Dean for Academic Affairs and Professor of Law c/o University of Dayton School of Law 300 College Park Dayton, Ohio 45469-2760 Defendants	)	CASE NO. **3 : 07 cv 0473** WALTER HERBERT RICE SHARON L. OVINGTON Judge **COMPLAINT** **Jury demand endorsed hereon.**

Now comes Plaintiff and for his Complaint against the Defendants, University of Dayton School of Law and Harry Gerla, state as follows:

PARTIES AND VENUE

1. At all relevant times, Plaintiff has been and to date is, New York state citizen.
2. At all relevant times Harry Gerla was Associate Dean for Academic Affairs for University of Dayton School of Law at 300 College Park, Dayton, Ohio 45469-2760.
3. University of Dayton School of Law main place of operation is 300 College Park, Dayton, Ohio 45469-2760.
4. Plaintiff claims over $75,000 in damages.
5. Plaintiff claims federal jurisdiction under 28 U.S.C. 1332, diversity jurisdiction.

FACTS

6. Plaintiff was a student in Criminal Procedure Spring 07, Professor Susan Brenner.
7. At all relevant times University of Dayton School of Law (hereafter UDSL) selected and required the use of ExamSoft, Softest examination software (hereafter testing software) as the only authorized alternative to hand writing examinations.
8. The testing software manufacture disclaims any responsibility resulting from use of the testing software.
9. UDSL accepted the testing software manufactures disclaimer.
10. It is the responsibility of UDSL to ensure testing software operates as required.
11. It is the responsibility of UDSL to accurately explain and instruct UDSL students as to the proper operation of testing software, including but not limited to software features and limitations.
12. It is the responsibility of UDSL to investigate allegations testing software does not operate as expected or explained by UDSL administration, faculty and/or staff (hereafter UDSL AFS).
13. On or about April 2007, the Plaintiff having information from non-first hand sources asked UDSL AFS to verify that information could not be transferred electronically from a test takers hard drive or the internet.
14. The Plaintiff sought verification from the relevant class professor, Susan Brenner, as well as Linda Cole and Joseph R. Kosch. The Plaintiff inquired as to a variety of possible methods for accomplishing a transfer of information to the test software.

15. All UDSL AFS were unequivocal in stating there is no possible method of transfer of information from a laptop hard drive or internet, to a test takers hard drive. Plaintiff was informed by all relevant UDSL AFS that test answers must be hand typed onto the test software

16. UDSL AFS misinformed the Plaintiff as to certain software capabilities, including but not limited to, copying to a test answer, prepared information from the test taker's hard drive or internet sources.

From UDSL website - Qualifications of the UDSL AFS that supplied misinformation to the Plaintiff :

17. Susan Brenner, Professor of Law, **Areas of Law:** Criminal Law, Cybercrimes

- Susan Brenner is a member of the U.S. Department of Justice's National Forensic Science Technology Center Digital Evidence Project. She is the NCR Distinguished Professor of Law and Technology at the School of Law. A renowned cybercrime scholar, Professor Brenner speaks internationally and writes extensively on cybercrime. She is a member of the American Bar Association's International Cybercrime Project and has served on the National District Attorneys Association's Committee on Cybercrimes.
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- Cybercrimes, according to Professor Brenner, are using a computer to commit fraud, like theft or stalking, or to commit other illegal activity, like create viruses. Interested in computer technology and the Internet, as well as criminal law, she finds the study of cybercrimes exciting. "There are always new crimes emerging," she says.

Selected Publications

- Distributed Security: Preventing Cybercrime, John Marshall Journal of Computer and Information Law (with Leo Clarke, 2006)
- Law in an Era of Pervasive Technology, Widener Law Journal (2006)
- Cybercrime Jurisdiction in Crime, Law and Social Change, published in Crime, Law and Social Change (2006)
- Digital Evidence: Computer Simulations and Animations, Computer & Telecommunications Law Review (2005)
- Toward a Criminal Law for Cyberspace: Distributed Security, 10 Boston University Journal of Science & Technology Law (2004)
- Efforts to Develop Transnational Legal Standards Governing Cybercrime: The Council of Europe and the G8, 1 GCC Legal Journal 8, State of Qatar (2003)
- A Survey and Assessment of National and Transnational Efforts to Harmonize Cybercrime Law, Interpol Computer Crime Manual (2003)

18. Linda Cole –Registrar – Linda Cole is responsible for exam administration, and maintaining academic files, assists the Associate Dean for Academic Affairs in preparing exam schedules as well as counseling students regarding the school's policies and procedures.

19. Joseph R. Kosch is a Technical Support Specialist: duties include computer support for all students, faculty and staff with a degree in Management Information Systems and is currently pursuing a master's degree in Computer Science and/or Business Administration. Previously employed at the University of Dayton Research Institute, Mr. Kosch worked as a Computer Technician and Server Administrator.

20. The Plaintiff used the information supplied by UDSL ASF in determining his methods of test preparation and time allocation for test preparation for all classes taken in the Spring 07 semester.

21. The information given to the Plaintiff by UDSL AFS was wrong. The testing software did allow "drag and drop" to be used..

22. An unknown number of students used this technique to bring prepared information to their test answer in Criminal Procedure Final Spring 07, Professor Susan Brenner.

23. Additionally the technique may have been used to copy professional written and prepared information without citation as to the original source.

24. At least one student transferred of prepared material to his test answer.

25. The above mentioned student has said he transferred between 30 to 40 pages of prepared information to his test answer.

26. Professor Brenner did not recognize evidence that answers were of such quality or length as to have been more than unlikely to have been typed within the limited timeframe of the test.

27. On or about August 2007, a student informed Professor Brenner of having transferred prepared information from his hard drive or internet site, to his test answer.

28. On or about September 25, 2007, Aleania Smith, 2L at UDSL, emailed UDSL AFS to complain about and question the situation.

29. Not until Ms. Smith's email did UDSL begin to officially investigate the situation.

30. The investigation was headed by Dean Harry Gerla.

31. Ms. Smith requested from UDSL multiple times for an explanation of the methodology being used to investigate the situation.

32. UDSL refused Ms. Smith's requests for explanation of investigation methodology.

33. On or about November 01, 2007, UDSL from Dean Harry Gerla provided a letter to the students of UDSL in an attempt to explain the situation and resolution.

34. Dean Harry Gerla stated that the conclusion of the investigation was that the use of the technique allowing information to be copied from a hard drive or internet did not materially affect student's grades and no grade would be altered as a result.

35. Dean Harry Gerla implied that the conclusion of the investigation was also that the lack of use of the technique allowing information to be copied from a hard drive or internet did not materially affect student's grades and no grade would be altered as a result.

36. UDSL investigation failed to apply appropriate investigative procedures in determining the effects of not using "drag and drop".

37. The Plaintiff asserts for the Criminal Procedure Spring 07 final exam, he acted in reliance upon misinformation certified as true by UDSL.

38. The Plaintiff's reliance upon the misinformation resulted in an adverse grade, substantially below his average.

39. UDSL does not allow a student with a grade point average below 2.3 to compete to write onto Law Review.

40. Virtually all jobs announced through UDSL require or strongly recommend student applicants to be on Law Review.

41. Having been on Law review creates a significantly greater chance of a lawyer, especially new lawyers, being hired.

42. Having been on Law review creates a significantly greater chance of a lawyer, especially new lawyers, being hired at firms with high starting salaries.

43. Having been on Law review creates a significantly greater chance of a lawyer, especially new lawyers, being accepted to be a judicial clerk.

44. Lawyers who have been on Law Review earn greater money or attain a more prestigious judicial and educational positions then lawyers who have not been on Law Review.

45. Law Review develops its participants greater legal writing and research skills.

46. Law Review offers opportunities that are not available to the class at large.

47. Law Review is held in high regard by the legal community.

48. The Plaintiff's grade point average discounting the class/grade at issue qualified him to compete for a position on Law Review

49. The Plaintiff's grade point average inclusive of the class/grade in question disqualified him from writing onto law review.

50. Plaintiff designated his intention to write onto Law Review by having opted into the TWEN site designated for writing onto Law Review.

51. The Plaintiff emailed UDSL AFS on November 4, 2007, stating his request and reasoning for a change of grade for Criminal Procedure Spring 07.

52. The Plaintiff emailed UDSL ASF again on November 7, 2007 to ensure UDSL received the request for a change of grade.

53. The defendant, Harry Gerla, replied to above email on November 14, 2007, denying the plaintiffs request.

COUNT 1
GROSS NEGLIGENCE

54. Plaintiff restates each and every allegation contained in paragraphs 1 – 53 as if fully restated herein.

55. Defendant UDSL had a duty to the Plaintiff to ensure:

    a. The testing software operated as expected
    b. Understand the true operational functions of the testing software

56. Defendant UDSL breached that duty by acting with willful and/or wanton disregard in explanation and/or administration of tests and testing software utilized by the university.

57. Due to the defendant UDSL's breach of duty, the Plaintiff suffers and/or will suffer, academically, and from limited academic and employment opportunities including but not limited to opportunity to qualify for UDSL Law Review.

COUNT 2
NEGLIGENCE

58. Plaintiff restates each and every allegation contained in paragraphs 1 – 57 as if fully restated herein.

59. Defendant UDSL had a duty to the Plaintiff to ensure:

   a. The testing software operated as expected
   b. Understand the true operational functions of the testing software

60. Defendant UDSL breached that duty by acting with negligence in the explanation and/or administration of tests and testing software utilized by the university.

61. Due to the defendant UDSL's breach of duty, the Plaintiff suffers and/or will suffer, academically, and from limited academic and employment opportunities including but not limited to opportunity to qualify for UDSL Law Review.

COUNT 3
GROSS NEGLIGENCE

62. Plaintiff restates each and every allegation contained in paragraphs 1 – 61 as if fully restated herein.

63. Once Plaintiff brought to the attention the likelihood that the testing software did not operate as presented by UDSL AFS, Defendant UDSL had a duty to the Plaintiff to investigate and confirm the proper operation of the testing software.

64. Defendant UDSL breached that duty by acting with willful and/or wanton disregard in investigating and confirming the actual operation capabilities of the testing software.

65. Due to the defendant UDSL's breach of duty, the Plaintiff suffers and/or will suffer, academically, and from limited academic and employment opportunities including but not limited to opportunity to qualify for UDSL Law Review.

COUNT 4
NEGLIGENCE

66. Plaintiff restates each and every allegation contained in paragraphs 1 – 65 as if fully restated herein.

67. Once Plaintiff brought to the attention the likelihood that the testing software did not operate as presented by UDSL AFS, Defendant UDSL had a duty to the Plaintiff to investigate and confirm the proper operation of the testing software.

68. Defendant UDSL breached that duty by acting with negligence in investigating and confirming the actual operation capabilities of the testing software.

69. Due to the defendant UDSL's breach of duty, the Plaintiff suffers and/or will suffer, academically, and from limited academic and employment opportunities including but not limited to opportunity to qualify for UDSL Law Review.

COUNT 5
GROSS NEGLIGENCE

70. Plaintiff restates each and every allegation contained in paragraphs 1 – 69 as if fully restated herein.

71. The defendants UDSL and Harry Gerla had a duty to act timely and appropriately in conducting an investigation.

72. The defendants UDSL and Harry Gerla failed to act when faced with evidence of testing and software irregularities:

    a. when students produced test answers in quality and/or length beyond realist professional expectations given the limited time of the test.

    b. when students explicitly informed the school of using computer features that were supposedly disabled.

73. The defendants USDL and Harry Gerla acted with willful and/or wanton disregard when conducting the investigation as to the evaluation of the circumstances, affects, and repercussions of the events prior to, during and after the final examination of UDSL class, Criminal Procedure Spring 07 Professor Brenner:

    a. defendants failed to use appropriate investigative techniques to determine the number of students using the supposedly disabled features.

    b. defendants failed to account for the time that the plaintiff would have saved had he been properly informed of the testing software capabilities.

    c. upon information and belief, the defendants UDSL and Harry Gerla formed a conclusion and response based upon the least disruptive action for the school rather than a just accommodation for the Plaintiff.

74. Due to the defendant UDSL's breach of duty, the Plaintiff suffers and/or will suffer, academically, and from limited academic and employment opportunities including but not limited to opportunity to qualify for UDSL Law Review.

COUNT 6
NEGLIGENCE

75. Plaintiff restates each and every allegation contained in paragraphs 1 – 74 as if fully restated herein.

76. The defendants UDSL and Harry Gerla had a duty to act timely and appropriately in conducting an investigation.

77. The defendants UDSL and Harry Gerla failed to act when faced with evidence of testing and software irregularities:

   a. when students produced test answers in quality and/or length beyond realist professional expectations given the limited time of the test.

   b. when students explicitly informed the school of using computer features that were supposedly disabled.

78. The defendants USDL and Harry Gerla acted with negligence when conducting the investigation as to the evaluation of the circumstances, affects, and repercussions of the events prior to, during and after the final examination of UDSL class, Criminal Procedure Spring 07 Professor Brenner:

   a. defendants failed to use appropriate investigative techniques to determine the number of students using the supposedly disabled features.

   b. defendants failed to account for the time that the plaintiff would have saved had he been properly informed of the testing software capabilities.

   c. upon information and belief, the defendants UDSL and Harry Gerla formed a conclusion and response based upon the least disruptive action for the school rather than a just accommodation for the Plaintiff.

79. Due to the defendant UDSL's breach of duty, the Plaintiff suffers and/or will suffer, academically, and from limited academic and employment opportunities including but not limited to opportunity to qualify for UDSL Law Review.

WHEREFORE, Plaintiff, John T. Valente demands judgment against defendants, UDSL and Harry Gerla, in an amount exceeding $25,000, with an expectation of damages in the amount of $200,000 damages, $1,000,000 punitive damages, equitable relief in the manner of changing the Plaintiff's grade at issue to a grade of Pass, equitable relief in the manner of UDSL offering assignment of Plaintiff to UDSL Law Review, plus interest as provided by law, associated legal expenses, court costs and any further monetary or specific relief that this court deems just and equitable.

JURY DEMAND

Plaintiff demands trial by jury on all issue in the action.

Date: December 21, 2007

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Pro Se

Certificate of Service

I hereby certify that a true and correct signed copy of the foregoing Complaint has been delivered on December ___, 2007, to

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